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09/842,872	04/27/2001	Stephen Gold	1509-173	7556

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EXAMINER	
DUNCAN, MARC M	

ART UNIT	PAPER NUMBER
2113	4

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/842,872	Applicant(s) GOLD, STEPHEN
	Examiner Marc M Duncan	Art Unit 2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 April 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-6 and 8-16* is/are rejected.

7)☒ Claim(s) *3 and 7* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 April 2001* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *3*.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Drawings

The drawings are objected to because Fig. 3 and Fig. 4 appear to have been switched. The specification refers to reference numbers and parts of Fig. 3 as if referring to Fig. 4 (i.e. part numbers 300, 301, 303 and 304 correspond to parts 400, 401, 403 and 404 in Fig. 4) and vice versa. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because Figs. 6-12 appear to be the incorrect drawings for this application. The description of the drawings contained in the specification does not correlate in any way to the actual drawings presented in the application. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 9 is objected to because of the following informalities: claim 9 refers to "said restore operation" in line 4. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The examiner could not find a teaching of restoring the back-up area partition or restoring the user settings archive partition area.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "said secondary data partition" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4, 6 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Erpeldinger.

Regarding claim 1:

Erpeldinger teaches at least one data processor in the Abstract line 2. A workstation inherently includes a data processor.

Erpeldinger teaches at least one data storage device, wherein said data storage device is configured into a plurality of partition areas in Fig. 1.

Erpeldinger teaches copying a back-up operating system from a back-up source onto an operating system back-up area partition that is not used for direct running of an operating system by the computer entity in col. 3 lines 44-46.

Erpeldinger teaches copying a user settings data from said back-up source to a user settings archive partition area of said data storage device in col. 4 lines 5-6.

Erpeldinger teaches resetting said computer entity in col. 4 lines 11-12.

Regarding claim 4:

Erpeldinger teaches copying said back-up operating system from said operating system back-up partition area to a primary operating system partition area of said data storage device in col. 4 lines 32-34.

Erpeldinger teaches the step of resetting comprises rebooting from said back-up copy operating system copied to said primary operating system partition and said user settings data copied from said user settings archive partition in col. 4 lines 34-38.

Regarding claim 6:

Erpeldinger teaches forcing said computer entity to boot from an emergency operating system stored on an emergency operating system partition area of said data storage device in col. 4 lines 11-12.

Erpeldinger teaches overwriting a content of said primary operating system partition area with said back-up operating system stored in said operating system back-up area partition in col. 4 lines 32-34.

Erpeldinger teaches restoring client and application configuration settings from said user settings archive partition area in col. 4 lines 34-38.

Regarding claim 8:

Erpeldinger teaches resetting said computer entity, including deleting application and user configuration setting data in col. 4 lines 17-18.

Erpeldinger teaches restoring said user configuration and setting data from said user settings archive partition area in col. 4 lines 34-38.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erpeldinger in view of Tamori et al.

Regarding claim 2:

The teachings of Erpeldinger are outlined above.

Erpeldinger does not explicitly teach copying a content of the operating system back-up area partition into a reserved space partition area of said data storage device. Erpeldinger does, however, teach copying a back-up operating system from a back-up source onto the operating system back-up area partition.

Tamori teaches copying a current BIOS into a spare storage area before updating of the BIOS in col. 2 lines 20-21.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teaching of Tamori to copy a current program code to a spare storage area prior to updating with Erpeldinger's teaching of copying a back-up operating system to an operating system back-up area partition.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because Tamori teaches that copying the code to a spare storage area prior to updating the code allows the current code to be reinstalled immediately if the writing of a new program code fails and prevents the old code from being lost by an operation error. It would therefore have been obvious to one of ordinary skill in the art at the time of invention to protect the operating system code of Erpeldinger by using the spare storage area teaching of Tamori.

Regarding claim 10:

The teachings of Erpeldinger are outlined above.

Erpeldinger does not explicitly teach restoring a primary operating system to a primary operating system partition area of a data storage device from a copy of the primary operating system temporarily stored in a reserved space partition if an error occurs in the recovery operation. Erpeldinger does, however, teach overwriting the primary operating system partition with a back-up operating system.

Tamori teaches copying a current BIOS into a spare storage area before updating of the BIOS in col. 2 lines 20-21.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teaching of Tamori to copy a current program code to a spare storage area prior to updating with Erpeldinger's teaching of copying a back-up operating system to a primary operating system partition.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because Tamori teaches that copying the code to a spare storage area prior to updating the code allows the current code to be reinstalled immediately if the writing of a new program code fails and prevents the old code from being lost by an operation error. It would therefore have been obvious to one of ordinary skill in the art at the time of invention to protect the operating system code of Erpeldinger by using the spare storage area teaching of Tamori.

Regarding claim 11:

Erpeldinger teaches that resetting said computer entity comprises deleting user settings data in col. 4 lines 17-18.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Erpeldinger in view of IEEE.

Regarding claim 9:

The teachings of Erpeldinger are outlined above.

Erpeldinger does not teach storing an event data describing at least one event of a restore operation if an error occurs in said recovery operation. Erpeldinger does, however, teach a recovery operation.

IEEE teaches storing event data if an error occurs during an operation in the definition of error logging.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the error logging teaching of IEEE with the recovery operation of Erpeldinger.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because it was well known to those skilled in the art at the time of invention to perform error logging in order to allow a user determine what occurred that caused an operation to fail so that the problem may be corrected.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGill, III et al. in view of Colligan et al.

Regarding claim 13:

McGill teaches copying a plurality of operating system files from an operating system data partition onto a back-up media in col. 5 lines 32-38.

McGill teaches copying a set of configuration settings from a user settings archive partition area of said data storage device to said back-up media in col. 5 lines 32-38 and Fig. 1.

McGill does not explicitly teach the operating system files being pristine manufactured operating system files from a back-up area partition. McGill does, however, teach copying all operating system files to the back-up media.

Colligan teaches storing pristine manufactured operating system files on a back-up partition area in col. 7 lines 56-67.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the pristine back-up partition teaching of Colligan with the copying of operating system files teachings of McGill.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because Colligan teaches that by including a back-up partition area containing pristine manufactured-state operating system files on a disk avoids many of the direct and indirect costs incurred in connection with the restoration of a hard disk drive in col. 5 lines 1-4.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGill, III et al. in view of Colligan et al.

The teachings of McGill and Colligan are outlined above.

McGill and Colligan do not explicitly teach copying user data from a data partition of said data storage device to said back-up media. McGill and Colligan do, however, teach backing up files to be restored in case of a system failure.

The examiner takes official notice that it was well known to those of ordinary skill in the art at the time of invention to back up user data to a back-up medium.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of McGill and Colligan with the well-known method of backing up user data to a back-up medium.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because a backup procedure performed on user data allows the user to have a copy of necessary data in case of system failure or failure of the system storage device, such that important user data will not be lost.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGill, III et al. in view of Colligan et al.

The teachings of McGill and Colligan are outlined above.

McGill and Colligan do not explicitly teach copying user data from a secondary data partition of said data storage device to said back-up media. McGill and Colligan do, however, teach backing up files to be restored in case of a system failure.

The examiner takes official notice that it was well known to those of ordinary skill in the art at the time of invention to back up user data to a back-up medium and to have multiple user data partitions.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of McGill and Colligan with the well-known method of backing up user data to a back-up medium and using multiple partitions.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because a backup procedure performed on user data allows the user to have a copy of necessary data in case of system failure or failure of the system storage device, such that important user data will not be lost. One of ordinary skill in the art at the time of invention would also have been motivated to combine the teachings because the use of more than one data partition increases access speed, among other benefits.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGill and Colligan as applied to claim 13 above, and further in view of Davis et al.

Regarding claim 16:

The teachings of McGill and Colligan are outlined above.

McGill and Colligan do not explicitly teach copying data uniquely identifying the computer entity to the back-up media. McGill and Colligan do, however, teach copying backup data from the hard drive to the back-up media.

Davis teaches copying data uniquely identifying the computer entity to the hard drive in col. 2 lines 25-28.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the COA teachings of Davis with the method of copying the hard drive data to the back-up media of McGill and Colligan.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because Davis teaches that the method of storing the COA

data on the hard drive of the computer system allows the OS back-up media to be associated with a single computer and helps combat piracy.

Allowable Subject Matter

Claims 3 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Prior art was not found that explicitly teaches or fairly suggests comparing a version of the operating system on a back-up data storage media with the hardware of the computer entity as outlined in claim 3. This limitation is considered allowable only in combination with the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art not relied upon contains elements of the instant claims and/or represents a current state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc M Duncan whose telephone number is 703-305-4622. The examiner can normally be reached on M-T and TH-F 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 703-305-9713. The fax phone

number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

md

ROBERT BEAUSOLIEL
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